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NOTE

From: EU Counter-Terrorism Coordinator
To: Permanent Representatives Committee/Council
Subject: Foreign terrorist fighter returnees: Policy options

Introduction

On behalf of the Member States most concerned by foreign terrorist fighters (FTFs, G 15), Belgium requested to discuss the issue of returnees at the JHA Council on 9 November 2016, based on policy options developed by the EU CTC. This paper is based on discussions in the context of the G 15 and includes a series of recommendations on EU support for Member States' action¹. The findings and recommendations below are those of the EU CTC and are presented for discussion at the Council.

¹ On 3 October 2016, the Belgian Counter-Terrorism Fusion Center (CUTA) in cooperation with the EU CTC and with the support of the European Commission organized a meeting involving G 15 security and policy experts, EEAS, Europol and Eurojust to discuss risk analysis and policy options. On 14 November 2016, Belgium organized a further G 15 senior officials meeting on returnees. On 18 November 2016, the G 15 Ministers of the Interior discussed the issue of returnees.

A comprehensive approach towards returnees is required, involving all relevant stakeholders. With regard to the criminal justice response, Ministers of Justice also need to be involved in the future.

Threat and risk analysis

Latest figures suggests that of the total number of European FTFs, around 15-20 % have died in theatre, 30-35 % have already returned and 50 % are still in Syria and Iraq (ie between 2.000 and 2.500 Europeans). Those having already returned could pose a threat to security, though their motivation to travel to Syria in the first wave may have been more to protect Muslims than to join Daesh (which did not exist at the time). Those being currently sent back to Europe by Daesh to commit attacks are naturally regarded as a threat to security and a number of those have been involved in recent terrorist attacks and foiled acts. The FTFs still in theatre are regarded as dangerous and battle hardened. There are largely two categories of returnees: those in the majority that will drift back, and those who will be sent back on specific missions, which are of most concern.

Both from a criminal justice and a threat perspective, disillusionment with Daesh in Syria and Iraq does not equal distance from the Daesh ideology nor disengagement from the jihadi cause at home. A decision to commit acts of terrorism may be well thought through or taken on the spur of the moment, based on the environment and contacts at home. Several Member States have developed an individual risk assessment methodology for returnees, classifying them according to when and how long they were in Syria, what they did there and the intent they showed upon return.

A number of FTFs, as well as their family members, wives, partners and children, are either still in Syria and Iraq and want to leave Daesh (but have difficulties doing so as Daesh tries to prevent defections) or are already in neighbouring countries, in particular Turkey, on their way back to Europe. There is also a significant FTF contingent with Daesh in Libya which might attempt to use their nationality or family connections to return to Europe.

While prosecution is the preferred option in most Member States, in practice, this does not lead to convictions in all cases for lack of evidence and demonstrates the need for a comprehensive approach in Member States, including through the involvement, where appropriate, of the local administration and multidisciplinary partners such as Child Protection Services, Social Services, Health sector etc. Some returnees are convicted and in prison, still others are free in their communities, others are being discreetly monitored or participate in rehabilitation programmes, others are subject to administrative measures or investigation and prosecution.

It is unclear whether there will be a massive return in the short term in case of major losses of Daesh in Syria and Iraq, but it was regarded as unlikely. Based on historic FTF situations, it is more likely that a number of FTFs will remain in theatre for example in resistance pockets, will stay in neighbouring countries, travel to other conflict zones (could be later, not immediately), while others will return. There may be a particular risk for abuse of women still in the conflict zone. FTFs will also continue to die in Syria and Iraq, especially in the context of the battles in Raqqa and Mosul.

Returnees remain in contact with Daesh in conflict zones through private accounts in social media to ensure secrecy in their communications. In general, Daesh members and sympathizers appear to move communications from mainstream social media, such as Twitter, to Telegram which is considered as a secure means of communication (Telegram allows for encrypted one-on-one communication with the use of encryption keys). Telegram's slow response to jihadist propaganda allows the abuse of its platform by terrorists and terrorism sympathizers. Telegram does not respond to EU Internet Referral Unit (IRU) at Europol requests for removal of jihadist propaganda material. The EU IRU, given its current mandate, cannot retrieve information from private accounts unless Member States request Europol to do so and take the necessary judicial measures.

Regarding possible links with serious organised crime, there is reason to assume that terrorist perpetrators in the Middle East are exploiting the trade in amphetamine (including "captagon") as well as other drugs, in order to support the financing of their activities and as a psychostimulant in warfare.

Policy options

Although the past (the experience from Afghanistan for example) shows that returning over many years and travel to other conflict zones helped to incubate a major threat, experts agreed that we should not encourage a massive, organised return (due to high risk for internal security, difficult for governments to encourage illegal border crossing etc). However, it was deemed necessary to be proactive and prepare for return. If a form of mass return were to take place, the joint focus could be on orchestrating this influx and on reducing the risk in close cooperation with countries in the region and the anti-ISIL coalition.

The EU could support Member States' efforts in the following areas:

1. Information sharing, closing of information gaps

As FTF do not always immediately return to their country of origin, information sharing with regard to (potential) returnees is important. Some may hide and wait intentionally in another EU Member State, some move to another EU Member State to help to prepare an attack, some choose itineraries upon return going via several other EU Member States, some FTF may hide in refugee flows. There is also the risk that FTF from non-EU States (such as Morocco, Tunisia, Russia) may ask for asylum in EU Member States. In general, it is important that Member States quickly implement the roadmap on information sharing and information management. It is important to share information on returnees who are already back in Europe, those that are in transit and FTFs still in the conflict zone. The three-tier information sharing approach, combining strengths of SIS, EIS and Europol's Focal Points should guide this process.

Information sharing on returnees could include the following aspects:

- Intensifying cooperation with the US on returnees, including information sharing of data collected on the battlefield in Syria and Iraq.

- Entering systematically FTF and (potential) returnees to the SIS II so that return to the Schengen area can be identified. Agree on post-hit procedures with regard to returnees, including after a hit systematic information of all Schengen associated countries and Europol by the State which inserted the alert. The Commission will present the outcome of the SIS overall evaluation on 7 December. The evaluation report will be accompanied by a proposal addressing the necessary improvements which require an amendment of the legal instruments. It will contain enhancements for counter-terrorism purposes, for example, a possibility to interrogate the person ("stop" check) as well as a new alert categories on "unknown wanted person or suspect". It will also give Europol access to all alerts that are relevant for the fight against terrorism and improve its capabilities.
- Europol's data collection plans related to FTF should be updated to take into account the needs with regard to returnees. Submission of contextual information for analysis purposes is increasingly important, as is timely information transmission. Europol could cross-check the information with its other relevant databases and feed Member States with results. Europol discusses the data collection plan requirements with the Heads of counter-terrorism investigations on 28/29 November 2016.
- Biometric information is increasingly important, in particular given potential use of false passports or infiltration in refugee flows. Fingerprints of FTF should already be entered into the SIS II as it is already possible to confirm the identity of a person with fingerprints and fingerprint search will be possible in the first quarter of 2018 (AFIS).
- Europol is also developing an AFIS capability (available mid 2017), however, biometric (and in particular fingerprint) data do not form part of the regular data currently submitted by Member States to Europol on FTF (to FP Travellers). Hence, building a capability of biometric (in particular fingerprint) data matching at Europol as soon as possible and updating data collection plans at national level to consistently include these data for suspected FTF is important.

- However, matching of biometric data of returnees did not represent the key ‘missing’ or ‘decisive’ link/aspect concerning the recent attacks in July 2016 onwards which were mostly characterized by radicalization of individuals already being present in the territory of the Member State concerned. Concerning the profile of the attackers in Belgium, for instance, false identification documents were used to cover attack preparations, but within the territory of the country (and not for intra Schengen or external travel - in order to minimize risk of detection). Thus, the monitoring of returnees at national level is of particular importance, especially with a view to the use of telecommunications, social media and in relation to the reduction of radicalization opportunities. All relevant information should be shared with the EU IRU for analysis purposes.
- Social media communication companies (such as Telegram) should be approached as partners in counter terrorism activities, as also intended with the EU Internet Forum on 8 December 2016.
- Entering systematically FTF and (potential) returnees into Europol databases. Sharing as much information as possible about (potential) returnees via Europol and the CTG. The modalities need to be further discussed, in particular in light of the outcome of the JHA Council lunch discussion of 18 November 2016. Options to share more information on threat/risk classifications and circumstantial information should also be explored. The information should be regularly updated, depending on moves of the returnees (for example confirmed arrival in Turkey, confirmed arrival in the EU) and assessment/behaviour/intent/measures taken upon return, so that all Member States have a good overview of all returnees and the potential threat they pose, as well as measures taken against them. This will help to monitor the returnees across the Schengen zone if they are not detained, enrich the threat assessment and facilitate investigations and prosecution.
- In this context, cooperation mechanisms on sharing information (e.g. geolocation of mobile phones), as well as social media monitoring in relation to conflict zones (e.g. with the US), concerning links towards the EU territory is of particular importance.

- Information about criminal investigations of returnees should be systematically shared with Europol and information about prosecutions and convictions of returnees should be systematically shared with Eurojust pursuant to Council Decision 2005/671/JHA. Information sharing should also include possible links to organised crime related aspects (e.g. drug trafficking).
- An ambitious approach regarding interoperability of databases will help to make qualitative progress.
- Making full use of Europol guest officers in Italy and Greece with regard to second line security checks at hotspots, which includes improvements in the way in which Europol is allowed to gather, handle and disseminate to all Member States information gathered in the course of the checks.
- Strengthening of border controls, cross checking and follow up actions. This must be accompanied by continuously updated common risk indicators helping police/border guards to identify FTF, in particular concerning soft entry points to the EU.

2. Reaching out to neighboring countries, in particular Turkey

Even if FTFs want support to leave Syria and Iraq, it is regarded as not advisable and difficult for Member States to engage with them as there are moral, political and legal liabilities. Facilitators, FTFs and their families may risk their lives trying to flee.

Capacities in Member States embassies for risk assessment and facilitation of escorted return of the returnees could be strengthened in Turkey. Cooperation with Turkey, Jordan, Lebanon and Iraq with regard to returnees is essential. This may also prevent travel to other areas where Daesh is present or other conflict zones in the future.

The EU could foster and support Member States' actions to achieve an overall coherent approach in several ways;

- Regular coordination meetings in Turkey and exchange of experience specifically on FTFs/returnees facilitated by the EU's CT/Security expert in the EU Delegation in Ankara and involving experts from the Member States (and possibly non-EU Members of the anti-ISIL coalition);
- Strengthening the dialogue with Turkey on returnees, in particular with regard to agreements on timely notifications, expulsions/returns and information exchange to reduce the risk on return and facilitate escorted returns as appropriate (Turkish policy seems to be to deport known FTFs after about 10 days. One of the issues in Turkey seems to be that returnees are not considered as criminals to be extradited to their country of nationality (in violation of UNSCR 2178), but rather as illegal immigrants to be returned to the country of their choice.) The EU plans to launch a project with the Turkish authorities shortly designed in part to assess how returnees are processed by the Turkish immigration authorities (the Turks would like to implement the project through the Ankara-based think tank, ORSAM). Turkey is also leading the development of policy options on returnees within the framework of the anti-ISIL Coalition's FTF Working Group. The ideas they have worked up, in collaboration with their co-chair, the Netherlands, should inform the EU's approach to working with Turkey on the returnees file;
- Strengthening the dialogue with other neighbouring countries on returnees, in particular Lebanon and Jordan, but also Tunisia, in the framework of the ongoing CT/Security dialogues. In this context, a fourth meeting² should be organized with the countries around the Mediterranean on FTF in the coming months, focusing on returnees. The question of returnees should also feature on the agenda of an EU seminar (involving Member State experts) with Lebanon to take place in early 2017 which will look at best practice in formulating national strategies to combat terrorism.

² Since early 2014, the EU CTC and the EEAS, with Commission support, have set up an informal group with representatives of countries around the Mediterranean (Morocco, Tunisia, Algeria, Egypt, Iraq, Lebanon, Jordan, Turkey) to discuss the issue of FTF. The group met in Brussels, Rabat and Baghdad.

- Promoting approximation with Council of Europe instruments on substantive criminal matters.
- Promoting the use of Council of Europe instruments by practitioners in EU Member States to develop judicial cooperation in criminal matters with Turkey.
- Further develop the EU's reaching out to Iraq, as FTFs may be arrested and detained in case of losses of Daesh, and cooperation may be necessary, especially for extradition and evidence collection purposes.
- Strengthening information exchange via Interpol, including strengthening the capacities of the partner countries to share and use information³. An EU project with INTERPOL to link border posts in Jordan to INTERPOL databases and generally improve the way INTERPOL tools are being used in Jordan has recently been completed successfully. It could be considered to replicate this type of project in other countries of the region.
- Three EU Member States have requested INTERPOL to share with them evidence collected from killed FTF (black notices), which is being collected by Iraq. This is working well and helps to identify killed FTF, other Member States could also request INTERPOL to share this information with them.
- Dialogue on returnees should also be strengthened with the Western Balkans.
- The EU should better exploit the channels for information-sharing offered by the anti-ISIL Coalition, using the political momentum for doing so that the Coalition is fostering, in line with the Coalition's Joint Statement agreed in Berlin on 17 November 2016.

³ Regional projects which might potentially be mobilized if the business case is made are in the pipeline such as the EU's CT MENA project - Instrument for Stability long term, the Euromed IV project under the European Neighbourhood Instrument (ENI) and a project under the ENI with regard to Interpol.

3. Development of risk assessment tools and rehabilitation/reintegration programmes

It was regarded as important and urgent to develop risk assessment tools and methodologies and rehabilitation/reintegration programmes for returnees inside and outside prison and assess risks of an individual on a case by case basis. This allows for a tailored and differentiated approach based on the risk profile of each returnee. A multidisciplinary approach and involvement of the local level, both for risk assessment and rehabilitation/reintegration are regarded as important. As prosecution of several FTFs may be a challenge (evidence) and surveillance of a large number of FTF is a resource intensive challenge, rehabilitation and reintegration programmes are needed both inside and outside of prison.

A number of Member States have already developed risk assessment tools and methodologies and rehabilitation programmes or are in the process of doing so. Some are engaging in joint efforts with financial support from the European Commission.

EU support could include:

- Financial support for the development of risk assessment methodologies, rehabilitation and training (the Commission may offer financial support for training and exchange of best practices to fight radicalisation eg in detention centres and rehabilitation). It was possible to apply to the Commission's action grants until 15 November 2016. (<http://ec.europa.eu/research/participants/portal/desktop/en/opportunities/just/topics/just-jcoo-terr-ag-2016.html>) The Commission could consider additional support in the future.
- Upon Member State request, support to set up rehabilitation programmes and interventions with expertise facilitated by the Commission, notably through the Radicalization Awareness Network
- Exchange of experiences, best practices and lessons learnt as regards the different tools and strategies in developing tailor made responses to the challenges of returning FTFs. The Commission will facilitate this through the Radicalization Awareness Network (development of a checklist) and possibly an expert meeting with Member States' representatives.

- Continued exchange of views with Eurojust and regular reporting to the Council and the Commission about prosecution strategies, challenges and criminal policy with regard to returnees, including the risk assessment tools to be used by judges and prosecutors and by prison staff for assessing the level of threat posed by returnees, alternative sentences (rehabilitation programmes, probation, diversion, youth criminal law) and administrative measures (house arrest, asset freezing, etc.).
- Europol could be asked to contribute to the elaboration of a standard manual on risk assessment based on best practice from Member States

4. Criminal justice response/bringing Daesh to justice

UNSCR 2249 (2015) reaffirms that those responsible for committing or otherwise responsible for terrorist acts, violations of international humanitarian law or violations or abuses of human rights must be held accountable. The UN Human Rights Council has set up an Independent International Commission of Inquiry on the Syrian Arab Republic, which is covering all actors, not only Daesh, and is hampered by denial of access to Syria. The adoption of the CT directive will help to have a common minimum standard for terrorist offenses across the EU, including FTF related crimes.

At EU level, a number of further actions could be envisaged to facilitate investigations and prosecutions in EU Member States:

- Finding an ambitious solutions for access of investigators and prosecutors to e-evidence as soon as possible (including by putting to good use the upcoming secure portal for the exchange of e-evidence)
- Mobilizing the Eurojust contact points of the European Network for investigation and prosecution of genocide, crimes against humanity and war crimes and also Europol, which will have a competence for war crimes with the new regulation from May 2017.

- Full use of Eurojust cooperation tools, with regard to requests for coordination meetings, coordination centres and Joint Investigation Teams, but also information sharing. Given the threat of returnees, Eurojust encourages the judicial authorities in the Member States to make a better use of the spontaneous exchange of information irrespective of Rogatory Letters, which is also a legal possibility to cooperate internationally, in a way which seems to be more adequate to the necessity of a fast and efficient circulation of information, supported by Eurojust. Through sharing of information on all prosecutions and convictions for FTFs, including the circumstantial information, Member States would benefit more from Eurojust's capabilities to detect links between cases, as well as from Eurojust's continuing efforts to centralise and analyse challenges and best practice related to prosecutions for terrorist offenses (in particular Terrorism Convictions Monitor)

It will also be important to support evidence collection, investigations and prosecutions in the region. This might open up the possibility that European FTF may be tried there and hence not return to Europe, as appropriate.

- Belgium, together with Argentina, the Netherlands, and Slovenia, has proposed a multilateral treaty on mutual legal assistance and extradition, to facilitate practical cooperation in investigating and prosecuting war crimes, crimes against humanity and genocide. This initiative is already supported by a cross-regional group of over 50 States. The EU could consider to promote this initiative.
- Linking to battlefield evidence in Syria/Iraq for investigations/prosecutions in Europe: In cooperation with INTERPOL it could be explored to revive the Venliq project which operated in Iraq in the past (collecting battlefield evidence and making accessible for investigations and prosecutions outside of the region).

- It will be crucial to preserve evidence already now. Iraq has requested the EU to support with evidence gathering, EU has proposed a project to Iraq to be carried out by the Commission for International Justice and Accountability (is already working on an EU project to collect evidence in Syria), the only organization in the field collecting evidence up to judicial standard (CIJA is linking Daesh crimes to the leadership and has already established 40 files for prosecution). CIJA is already working in the North of Iraq. This project would cover evidence collection and support to Iraqi tribunals in the North of Iraq and should be launched as soon as possible with built-in assurances that it would integrate into a larger UN led effort once set up. Iraqi agreement to the project is still pending and it would be important to move forward quickly. Further EU projects could be envisaged to raise awareness of personnel on the ground in Iraq and Syria of the importance to collect evidence fit for legal scrutiny in EU Member States and the EU partner countries and provide training in this respect.
- CIJA has collected evidence on European FTF, including in Syria, which it is sharing with the concerned EU Member States to support investigations and prosecutions. It would be useful to link Europol and Eurojust to CIJA as well.
- Iraq may request UN support to set up a mechanism for inquiry into Daesh crimes. This would be in line with the UK/Belgian/Iraqi Bringing Daesh to Justice initiative at the UN in September. This mechanism would take steps to gather and preserve evidence in Iraq. The EU could consider to promote this solution at the international level.
- Hybrid tribunals could be supported upon Iraqi request, where international experts would support Iraqi defense lawyers and judges (this is already part of the EU CIJA project proposal). EU would likely need assurances on human rights and the death penalty. This could help build Iraqi capacity. Hybrid tribunals could also be set up in Lebanon or Jordan, upon request.

5. Strategic communications

Given the changed Daesh communication focus in the West (no longer on building the Caliphate, territory, call not to travel to Syria or Iraq but instead staying home and committing attacks in the West), using returnees in our communication strategy to discourage future jihadi travellers from going to Daesh held territories may be less effective. Overall, travel to Syria and Iraq has dropped sharply. While this may be due to the measures taken, it may also be because of the drop in the appeal of Daesh, which has been based on military conquest and relentless advance in Syria and Iraq, and a new way of life and sense of belonging.

- The EU's European Strategic Communications Network (formerly SSCAT) can assist Member States in their strategic communications efforts, both by advising on and developing campaigns upon request and by exchanging good practices.

6. Repentants (defectors, “repentis”)

A number of Member States, in particular Italy and Spain, have historically very good experiences with specific legal regimes for terrorist defectors, under which these may, in exchange for information that leads for example to the arrest of other members of terrorist cells, obtain a reduced sentence or other legal privileges or concessions (a possible reduction in sanction is something that was foreseen under the Framework Decision on Terrorism and is maintained in the proposed CT Directive). It would be important to gather as much information as possible from Daesh returnees or operators.

Therefore, other Member States, such as Belgium, are in the process of adopting a relevant law and in France, this has been recommended by the parliamentary inquiry on the recent terrorist attacks.

- It could be further discussed whether European action in this matter could be useful, especially in the case of relocation and allocation of new identities which may require cross-border efforts.
- Member States that have extensive experience with repentants could be invited to share their approach.

7. Women and children

In addition to dealing comprehensively with foreign terrorist fighter returnees as set out above, the challenge of returning spouses and children also needs to be addressed across the different policy areas.

It will be a great challenge to deal with the hundreds of children born or raised in the Caliphate upon their return or move to the European Union. Such children may be victims of violence or may have witnessed violence, they can be traumatized and in need of protection and support. Such children may nonetheless also pose a threat to security; they may also be already radicalised or vulnerable to radicalisation, even though very young. Reflections about how to ensure protection and access to counselling, including psychological and post-trauma counselling, as well as education for these children, while dealing with the potential threats some of them may pose and ensuring sensitive and targeted rehabilitation and reintegration programmes, are at an early stage in a number of Member States. There may be legal difficulties for information sharing with regard to children.

It is also necessary to reflect on how to deal with other family members, and in particular women: many may have suffered from abuse and may be traumatised, victims of violence, including sexual violence, and should have access to protection, support and counselling; they may, even if they did not have a fighting role, still believe in the Daesh ideology, and may have supported Daesh in other ways, and hence may pose a threat, and thus need rehabilitation and reintegration.

The Annual Conference of the Radicalisation Awareness Network on 9 November 2016 dealt with this issue, as did a workshop on radicalisation of women and girls organized under the Dutch Presidency.

- Member States are encouraged to participate in discussing this emerging challenge, with a view to developing good practices and policy recommendations. To get an overview of Member States' approaches, a questionnaire will be distributed.
- The RAN could support Member States to set up programmes and share experiences among front line officials.

- It is recommended to continue the exchange of views at Eurojust and reporting back to the Council on the nature of the conduct of women and girls travelling to conflict zones and supporting the FTFs in various ways. From the terrorist convictions it receives, Eurojust has highlighted that Member States encounter difficulties in determining whether this conduct is a crime. Such conduct has been interpreted differently by the courts of the Member States, leading to convictions in some Member State and to acquittals in the others.
 - Information sharing with regard to returning women and children also needs to be addressed, including in the context of Europol. Member States could add relevant aspects into the data collection for analysis purposes in the FP Travellers.
-